

Senate File 452

S-3241

1 Amend the amendment, S-3223, to the House amendment,
2 S-3218, to Senate File 452, as amended, passed, and
3 reprinted by the Senate, as follows:

4 1. Page 61, before line 23 by inserting:

5 <DIVISION _____
6 EMINENT DOMAIN

7 Sec. _____. NEW SECTION. 6A.15 Property on state
8 historic registry.

9 1. Property listed on the state register of
10 historic places maintained by the historical division
11 of the department of cultural affairs shall not be
12 removed from the register solely for the purpose of
13 allowing acquisition of the property by condemnation,
14 unless such condemnation is undertaken by the
15 department of transportation.

16 2. Property listed on the state register of
17 historic places maintained by the historical division
18 of the department of cultural affairs shall not be
19 condemned by the state or a political subdivision
20 unless a joint resolution authorizing commencement of
21 the condemnation proceedings is approved by a vote of
22 at least two-thirds of the members of both chambers
23 of the general assembly and signed by the governor.
24 The approval requirements of this subsection shall not
25 apply to condemnation undertaken by the department of
26 transportation.

27 Sec. _____. Section 6A.19, Code 2013, is amended to
28 read as follows:

29 **6A.19 Interpretative clause.**

30 A grant in this chapter of right to take private
31 property for a public use shall not be construed as
32 limiting a like grant elsewhere in the Code for another
33 and different use. Unless specifically provided by
34 law, this chapter shall not be construed to limit or
35 otherwise affect the application of chapters 478 and
36 479 to the eminent domain authority of the utilities
37 division of the department of commerce.

38 Sec. _____. Section 6A.22, subsection 2, paragraph
39 c, subparagraph (1), Code 2013, is amended to read as
40 follows:

41 (1) (a) If private property is to be condemned for
42 development or creation of a lake, only that number
43 of acres justified as reasonable and necessary for
44 a surface drinking water source, and not otherwise
45 acquired, may be condemned. In addition, the acquiring
46 agency shall conduct a review of prudent and feasible
47 alternatives to provision of a drinking water source
48 prior to making a determination that such lake
49 development or creation is reasonable and necessary.
50 Development or creation of a lake as a surface drinking

1 water source includes all of the following:
2 (i) Construction of the dam, including sites for
3 suitable borrow material and the auxiliary spillway.
4 (ii) The water supply pool.
5 (iii) The sediment pool.
6 (iv) The flood control pool.
7 (v) The floodwater retarding pool.
8 (vi) The surrounding area upstream of the dam
9 no higher in elevation than the top of the dam's
10 elevation.
11 (vii) The appropriate setback distance required
12 by state or federal laws and regulations to protect
13 drinking water supply.
14 (b) For purposes of this subparagraph (1), "*number*
15 *of acres justified as reasonable and necessary for*
16 *a surface drinking water source*" means according to
17 guidelines of the United States natural resource
18 conservation service and according to analyses of
19 surface drinking water capacity needs conducted
20 by one or more registered professional engineers.
21 The registered professional engineers may, if
22 appropriate, employ standards or guidelines other
23 than the guidelines of the United States natural
24 resource conservation service when determining the
25 number of acres justified as reasonable and necessary
26 for a surface drinking water source. The data and
27 information used by the registered professional
28 engineers shall include data and information relating
29 to population and commercial enterprise activity for
30 the area from the two most recent federal decennial
31 censuses unless the district court of the county in
32 which the property is situated has determined by a
33 preponderance of the evidence that such data would
34 not accurately predict the population and commercial
35 enterprise activity of the area in the future.
36 (c) A second review or analysis of the drinking
37 water capacity needs shall be performed upon receipt
38 by the acquiring agency of a petition signed by not
39 less than twenty-five percent of the affected property
40 owners. The registered professional engineer to
41 perform the second review or analysis shall be selected
42 by a committee appointed by the affected property
43 owners and whose membership is comprised of at least
44 fifty percent property owners affected by the proposed
45 condemnation action. The acquiring agency shall be
46 responsible for paying the fees and expenses of such
47 an engineer.
48 (d) If private property is to be condemned for
49 development or creation of a lake, the plans, analyses,
50 applications, including any application for funding,

1 and other planning activities of the acquiring agency
2 shall not include or provide for the use of the lake
3 for recreational purposes.

4 Sec. _____. Section 6B.54, subsection 10, paragraph
5 a, Code 2013, is amended by adding the following new
6 subparagraph:

7 NEW SUBPARAGRAPH. (3) Reasonable attorney fees and
8 reasonable costs not to exceed one hundred thousand
9 dollars, attributable to a determination that the
10 creation of a lake through condemnation includes a
11 future recreational use or that a violation of section
12 6A.22, subsection 2, paragraph "c", subparagraph (1),
13 subparagraph division (d), has occurred, if such fees
14 and costs are not otherwise provided under section
15 6B.33.

16 Sec. _____. NEW SECTION. **6B.56B Disposition of**
17 **condemned property — two-year time period.**

18 1. When two years have elapsed since property
19 was condemned for the creation of a lake according
20 to the requirements of section 6A.22, subsection 2,
21 paragraph "c", subparagraph (1), and the property has
22 not been used for or construction has not progressed
23 substantially from the date the property was condemned
24 for the purpose stated in the application filed
25 pursuant to section 6B.3, and the acquiring agency has
26 not taken action to dispose of the property pursuant
27 to section 6B.56, the acquiring agency shall, within
28 sixty days, adopt a resolution offering the property
29 for sale to the prior owner at a price as provided in
30 section 6B.56. If the resolution adopted approves an
31 offer of sale to the prior owner, the offer shall be
32 made in writing and mailed by certified mail to the
33 prior owner. The prior owner has one hundred eighty
34 days after the offer is mailed to purchase the property
35 from the acquiring agency.

36 2. If the acquiring agency has not adopted a
37 resolution described in subsection 1 within the
38 sixty-day time period, the prior owner may, in writing,
39 petition the acquiring agency to offer the property
40 for sale to the prior owner at a price as provided in
41 section 6B.56. Within sixty days after receipt of
42 such a petition, the acquiring agency shall adopt a
43 resolution described in subsection 1. If the acquiring
44 agency does not adopt such a resolution within sixty
45 days after receipt of the petition, the acquiring
46 agency is deemed to have offered the property for sale
47 to the prior owner.

48 3. The acquiring agency shall give written notice
49 to the owner of the right to purchase the property
50 under this section at the time damages are paid to the

1 owner.

2 Sec. _____. Section 403.7, subsection 1, unnumbered
3 paragraph 1, Code 2013, is amended to read as follows:

4 A municipality shall have the right to acquire by
5 condemnation any interest in real property, including a
6 fee simple title thereto, which it may deem necessary
7 for or in connection with an urban renewal project
8 under this chapter, subject to the limitations on
9 eminent domain authority in ~~chapter~~ chapters 6A and 6B.
10 However, a municipality shall not condemn agricultural
11 land included within an economic development area
12 for any use unless the owner of the agricultural land
13 consents to condemnation or unless the municipality
14 determines that the land is necessary or useful for any
15 of the following:

16 Sec. _____. NEW SECTION. 423B.11 Use of revenues —
17 limitation.

18 The revenue raised by a local sales and services
19 tax imposed under this chapter by a county shall not
20 be expended for any purpose related to a project that
21 includes the condemnation of private property for
22 the creation of a lake according to the requirements
23 of section 6A.22, subsection 2, paragraph "c",
24 subparagraph (1), if the local sales and services tax
25 has not been approved at election in the area where the
26 property to be condemned is located.

27 Sec. _____. Section 455A.5, Code 2013, is amended by
28 adding the following new subsection:

29 NEW SUBSECTION. 7. The authority granted to the
30 commission to acquire real property for purposes
31 of carrying out a duty related to development or
32 maintenance of the recreation resources of the state,
33 including planning, acquisition, and development of
34 recreational projects, and areas and facilities related
35 to such projects, shall not include the authority to
36 acquire real property by eminent domain.

37 Sec. _____. Section 456A.24, subsection 2, unnumbered
38 paragraph 1, Code 2013, is amended to read as follows:

39 Acquire by purchase, ~~condemnation~~, lease, agreement,
40 gift, and devise lands or waters suitable for the
41 purposes hereinafter enumerated, and rights-of-way
42 thereto, and to maintain the same for the following
43 purposes, ~~to wit~~:

44 Sec. _____. Section 456A.24, Code 2013, is amended by
45 adding the following new subsection:

46 NEW SUBSECTION. 15. The authority granted the
47 department to acquire real property for any statutory
48 purpose relating to the development or maintenance
49 of the recreation resources of the state, including
50 planning, acquisition, and development of recreational

1 projects, and areas and facilities related to such
2 projects, shall not include the authority to acquire
3 real property by eminent domain.

4 Sec. _____. Section 461A.7, Code 2013, is amended to
5 read as follows:

6 **461A.7 ~~Eminent domain~~ Purchase of lands — public**
7 **parks.**

8 The commission may purchase ~~or condemn~~ lands from
9 willing sellers for public parks. ~~No~~ A contract for
10 the purchase of such public parks shall not be made to
11 an amount in excess of funds appropriated therefor by
12 the general assembly.

13 Sec. _____. Section 461A.10, Code 2013, is amended to
14 read as follows:

15 **461A.10 Title to lands.**

16 The title to all lands purchased, ~~condemned,~~ or
17 donated, hereunder, for park ~~or highway~~ purposes and
18 the title to all lands purchased, condemned, or donated
19 hereunder for highway purposes, shall be taken in the
20 name of the state and if thereafter it shall be deemed
21 advisable to sell any portion of the land so purchased
22 or condemned, the proceeds of such sale shall be placed
23 to the credit of the ~~said~~ public state parks fund to be
24 used for such park purposes.

25 Sec. _____. Section 463C.8, subsection 1, paragraph
26 k, Code 2013, is amended to read as follows:

27 k. The power to acquire, own, hold, administer,
28 and dispose of property, except that such power is not
29 a grant of authority to acquire property by eminent
30 domain.

31 Sec. _____. REPEAL. Sections 461A.9 and 461A.75,
32 Code 2013, are repealed.

33 Sec. _____. SEVERABILITY. If any provision of this
34 division of this Act is held invalid, the invalidity
35 shall not affect other provisions or applications of
36 this division of this Act which can be given effect
37 without the invalid provision, and to this end the
38 provisions of this division of this Act are severable
39 as provided in section 4.12.

40 Sec. _____. EFFECTIVE UPON ENACTMENT. This division
41 of this Act, being deemed of immediate importance,
42 takes effect upon enactment.

43 Sec. _____. APPLICABILITY. Except as otherwise
44 provided in this division of this Act, this division
45 of this Act applies to projects or condemnation
46 proceedings pending or commenced on or after the
47 effective date of this division of this Act.

48 Sec. _____. RETROACTIVE APPLICABILITY.
49 Notwithstanding any provision of law to the contrary,
50 the following provisions of this division of this

1 Act apply retroactively to projects or condemnation
2 proceedings pending or commenced on or after February
3 15, 2013:

- 4 1. The section amending section 6A.22.
- 5 2. The section enacting section 6B.56B.>
- 6 2. By renumbering as necessary.

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